

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WYCKOFF FARMS,
INCORPORATED, a Washington
corporation,

Plaintiff,

v.

INDUSTRIAL CONTROL CONCEPTS,
INC., d/b/a ICC, INC., a Missouri
corporation, ICC NORTHWEST, INC.,
an Oregon corporation, and ICC
TURNKEY, INC., a Missouri
corporation,

Defendants.

NO: 4:20-CV-5095-TOR

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff's Motion for Partial Summary Judgment (ECF No. 28). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the reasons discussed below, Plaintiff's Motion for Partial Summary Judgment (ECF No. 28) is **GRANTED**.

ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ~ 1

DISCUSSION

This case concerns construction contracts related to an extraction facility. ECF No. 16. On November 17, 2020, Plaintiff filed its amended complaint. *Id.* The amended complaint raises the following causes of action: (1) breach of contract, (2) anticipatory repudiation, (3) unjust enrichment, (4) failure to defend and indemnify, and (5) unfair and deceptive business practices. *Id.* at 9-11.

On August 5, 2021, Plaintiff filed the present motion, moving for partial summary judgment on the duty to defend claim. ECF No. 28. Plaintiff moves for an award of \$21,285.47, which includes \$10,992.50 in fees, \$9,444 in costs (including the cost of the bond to release the claim of lien), and \$848.97 in prejudgment interest on defense costs. *See id.* The parties timely filed their respective response and reply. ECF Nos. 31, 35.

In their response, Defendants do not substantively oppose the partial summary judgment and did not file any statement of disputed material facts. *See* LCivR 56(c)(B), (e). Instead, Defendants stipulated “that the parties’ agreement contains a Duty to Defend provision which encompasses the lien dispute between Plaintiff and NIPR which serves as the basis of NIPR’s litigation against Plaintiff and Defendants.” ECF No. 31 at 1-2. Defendants only oppose Plaintiff’s motion to the extent that Plaintiff retained the same counsel for the underlying and present actions, citing an unspecified conflict of interest. ECF No. 31 at 2. Defendants

1 also object to Plaintiff's fees and rates generally without citing to any specific
2 objections. *Id.*

3 The reasonableness of a trial court's award of attorney's fees is reviewed for
4 abuse of discretion. *Sapper v. Lenco Blade, Inc.*, 704 F.2d 1069, 1073 (9th Cir.
5 1984); *Red v. Kraft Foods Inc.*, 680 F. App'x 597, 599 (9th Cir. 2017). Courts
6 assess attorney's fees by calculating the lodestar figure, which is the number of
7 hours reasonably expended multiplied by the reasonable hourly rate of
8 compensation. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Johnson v. MGM*
9 *Holdings, Inc.*, 943 F.3d 1239, 1242 (9th Cir. 2019). This lodestar calculation is
10 presumptively reasonable. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978
11 (9th Cir. 2008).

12 When determining hourly rates, courts look to the "prevailing market rates
13 in the relevant community." *Vargas v. Howell*, 949 F.3d 1188, 1194 (9th Cir.
14 2020) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Courts typically use
15 the rates of comparable attorneys in the forum district, here the Eastern District of
16 Washington. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *Montes v.*
17 *City of Yakima*, No. 12-CV-3108-TOR, 2015 WL 11120966, at *3 (E.D. Wash.
18 June 19, 2015). When determining the reasonableness of the hours expended, the
19 Court should exclude from its calculation "hours that were not reasonably
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1 expended” such as hours that are “excessive, redundant, or otherwise
2 unnecessary.” *Gates*, 987 F.2d at 1397 (quoting *Hensley*, 461 U.S. at 433-34).

3 Moreover, an award of prejudgment interest is authorized when the amount
4 due on the judgment is liquidated or is otherwise “determinable by computation
5 with reference to a fixed standard.” *Prier v. Refrigeration Eng’g Co.*, 74 Wash. 2d
6 25, 32 (1968). A claim is considered liquidated when the fact finder does not need
7 to exercise any discretion in determining the measure of damages. *Egerer v. CSR*
8 *W., LLC*, 116 Wash. App. 645, 653 (2003). The rate of interest can be determined
9 by statute or contract with limits by statute. *See* RCW 4.56.110; RCW 19.52.010.

10 Here, based on Defendants’ stipulation, there are no issues of material fact
11 as to Plaintiff’s failure to defend and indemnify claim. Fed. R. Civ. P. 56(a), (c).
12 Defendants’ objection based on the retention of the same counsel for both actions
13 is without merit; Defendants offer no evidence or support that there is a conflict of
14 interest and the Court finds none. ECF No. 31. In any event, the objection is not
15 relevant to the substantive merits of the claim, to which Defendants stipulated. *Id.*
16 Therefore, summary judgment on this claim is appropriate.

17 The Court finds the claimed fees, costs, and prejudgment interest reasonable.
18 Plaintiff has incurred \$10,992.50 in fees and \$9,444 in costs defending NIPR’s
19 claim of lien and related state court litigation. ECF No. 28 at 14. Plaintiff also
20 seeks prejudgment interest in the amount of \$848.97 on the liquidated sums at 12%

1 per annum as of the date Defendants should have paid Plaintiff. ECF No. 28 at 15.
2 The hourly rates are comparable to other attorneys and paralegals with similar
3 levels of experience. *See* ECF No. 29 at 2, ¶ 6, at 6-8. In reviewing the tasks, the
4 hours are reasonably expended and are not excessive, redundant, or otherwise
5 unnecessary. *Gates*, 987 F.2d at 1397. Additionally, the sums are liquidated to
6 warrant the application of 12% interest as of the date Defendants should have paid
7 Plaintiff. *See* ECF No. 28 at 14-15; RCW 19.52.010. The Court accepts the 12%
8 rate where Defendant provides no objection.

9 Rule 54(b) allows courts to “direct entry of a final judgment as to one or
10 more, but fewer than all, claims or parties only if the court expressly determines
11 that there is no just reason for delay.” “[I]n deciding whether there are no just
12 reasons to delay the appeal of individual final judgments [. . .], a district court must
13 take into account judicial administrative interests as well as the equities involved.
14 Consideration of the former is necessary to assure that application of the Rule
15 effectively ‘preserves the historic federal policy against piecemeal appeals.’”
16 *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980) (citation omitted).
17 The district court evaluates “such factors as the interrelationship of the claims so as
18 to prevent piecemeal appeals in cases which should be reviewed only as single
19 units.” *Id.* at 10. “[O]nce such juridical concerns have been met, the discretionary
20 judgment of the district court should be given substantial deference, for that court

1 is ‘the one most likely to be familiar with the case and with any justifiable reasons
2 for delay.’” *Id.* (citation omitted).

3 Rule 54(b) has a proper place. The Rule was adopted “specifically to avoid
4 the possible injustice of delaying judgment on a distinctly separate claim pending
5 adjudication of the entire case. . . . The Rule thus aimed to augment, not diminish,
6 appeal opportunity.” *Jewel v. Nat’l Sec. Agency*, 810 F.3d 622, 628 (9th Cir. 2015)
7 (internal brackets omitted, citing *Gelboim v. Bank of Am. Corp.*, 135 S.Ct. 897,
8 902–03(2015)). The Ninth Circuit first asks “whether the certified order is
9 sufficiently divisible from the other claims such that the “case would [not]
10 inevitably come back to this court on the same set of facts.” *Id.* (citation omitted).

11 The equitable analysis ordinarily “is left to the sound judicial discretion of the
12 district court to determine the ‘appropriate time’ when each final decision in a
13 multiple claims action is ready for appeal.” *Id.* (citation omitted). Finally, the
14 appeal must meet the “no just reason for delay” prong of Rule 54(b). *Id.* at 630.
15 An appeal should not be certified if interlocutory review is more likely to cause
16 additional delay than it is to ameliorate delay problems.

17 Here, there is no dispute that Defendants had a duty to defend Plaintiff in the
18 Benton County litigation. This Order resolves the amount owed for Defendants’
19 failure to comply with its duty to defend. There is no reason to delay payment of
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1 the amount owed any longer so the Court will enter a partial judgment which will
2 allow collection of the amount owed.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Partial Summary Judgment (ECF No. 28) is

5 **GRANTED.**


6 2. Plaintiff Wyckoff Farms, Incorporated is awarded \$10,992.50 in attorney
7 fees, \$9,444.00 in costs, and \$848.97 in prejudgment interest for a **total**
8 **amount of \$21,285.47** payable by Defendants ICC, Inc., ICC Northwest,
9 Inc, and ICC Turnkey, Inc. Upon entry of judgment, interest will accrue
10 on the unpaid balance at the statutory rate for federal judgments
11 according to 28 U.S.C. § 1961.

12 3. Pursuant to F.R.Civ.P. Rule 54(b), the Clerk of Court shall enter a partial
13 judgment in favor of Wycokoff Farms, Incorporated and against
14 Defendants ICC, Inc., ICC Northwest, Inc, and ICC Turnkey, Inc.

15 The District Court Clerk is directed to enter this Order and Judgment
16 accordingly and provide copies to counsel. The file remains open.

17 DATED September 21, 2021.




THOMAS O. RICE
United States District Judge